

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

In Re:

David Cardona

Debtor

Case No.: 09 B 12314

Chapter 7

Hearing Date: 08/11/09

Hon. Jacqueline P. Cox

NOTICE OF MOTION (S)

TO: NATIONAL PAYMENT CENTER, UNITED STATES DEPARTMENT OF EDUCATION, P.O. BOX 5609, GREENVILLE, TX 75403, notice through ECF and U.S. Mail, RICHARD M. FOGEL, ESQ. 321 N. CLARK STREET, SUITE 800, CHICAGO, ILLINOIS 60654 ,notice through ECF and U.S. Mail, WILLIAM T. NEARY, TRUSTEE, REGION 11, 219 S. DEARBORN, ROOM 873, CHICAGO, IL 60604, notice through ECF and U.S. Mail

PLEASE TAKE NOTICE that on the August 11, 2009 at 9:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Jacqueline P. Cox, Bankruptcy Judge, in the courtroom usually occupied by her at the Everett McKinley Dirksen Building, 219 South Dearborn, Chicago, Illinois Room 619, or before any other Bankruptcy Judge who may be sitting in her stead, and shall then and there present the Debtor's ***Motion to Reopen Chapter 7 Case*** and ***Motion to Discharge Student Loans***, copies of which are attached hereto and herewith served upon you, and shall pray for the entry of an Order in compliance therewith, at which time you may appear if you so desire.

PROOF OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached Motion upon the parties listed above, as to the Trustee and Creditor's attorney via electronic notice on July 31, 2009 and as to the Debtor by causing same to be mailed in a properly addressed envelope, postage prepaid, from the U.S. Post Office located at the corners of Lake and Clinton, Chicago, IL 60661.

/magdalena aguilar
Attorney for Movant

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Chicago, Illinois 60661
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AMENDED MOTION TO DISCHARGE STUDENT LOANS

NOW COMES David Cardona (“Debtor” or “Movant”), by and through his attorney, MAGGIE AGUILAR, and pursuant to U.S.C. § 523(a)(8), moves this Honorable Court for the entry of an order granting him a discharge of any and all student loans. In support thereof, Movant states as follows:

1. That the Debtor received financial assistance through a GI loan issued by the U.S. Department of Education in 1987.
2. That the balance on said student loan as of 10/02/2008 is \$8,017.19.
3. That the Debtor moved to Mexico in 1992 and lived there until 2002 and was unaware that the loan(s) at issue became due.
4. That the Debtor thereafter was incarcerated in Shawnee Correctional Facility in Shawnee, Illinois from December 2003 through February 2005 and continued to be unaware that the loan(s) at issue became due.
5. That the Debtor has made a good faith effort to repay the loan in that he contacted the creditor in 2008 to arrange for a payment plan; that under said plan the Debtor made a payment of \$438.00 on April 11, 2008. See Exhibit 1.
6. That thereafter the Debtor made payments of \$98 in May, June, July, August and September of 2008. See Exhibits 2-5.

7. That the Debtor was laid off as a used car salesman in August 2008 and thereafter was unable to make said payments.
8. That the Debtor's current income is \$300 a week.
9. That the Debtor has three minor children in Mexico to support.
10. That forcing the Debtor to repay this loan will impose an undue hardship.
11. When considering a request for relief under U.S.C. § 523(a)(8), this Honorable Court is bound by *Matter of Robinson*, 999 F.2nd 1132 (7th Cir. 1993) which, adopted the *Brunner* test. *Brunner v. New York State Higher Education Services Corp.*, 831 F.2nd 395 (2nd Cir. 1987)(per curiam).
12. That the Debtor meets the three-prong test of *Brunner* in that:
 - A. Based on the Debtor's current income he cannot maintain a minimal standard of living if forced to repay the loan.
 - B. The Debtor is 54 years of age and his financial situation is likely to persist for a significant portion of the repayment period of the student loans.
 - C. That the debtor has made a good faith effort to repay the loan.

WHEREFORE, the Debtor, DAVID CARDONA, prays for the entry of an order discharging any and all student debt and for such other relief as the Court may deem just and proper.

Dated this 27th of July 2009.

Respectfully Submitted:
DAVID CARDONA

By: /s magdalena aguilar

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